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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

**Re: In the Matter of Advanced Television Systems and Their Impact upon the  
Existing Television Broadcast Service  
MM Docket No. 87-268**

Dear Mr. Caton:

Enclosed, on behalf of MARRI Broadcasting, LP, are an original and five copies of its reply comments in response to the Federal Communications Commission's *Sixth Further Notice of Proposed Rule Making* in the above-referenced proceeding.

Should there be any questions regarding this transmittal, kindly direct them to the undersigned.

Sincerely,



Jocelyn R. Roy

Enclosures

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Before the  
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Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact upon the )  
Existing Television )  
Broadcast Service )

MM Docket No. 87-268

**REPLY COMMENTS OF MARRI BROADCASTING, LP**

MARRI Broadcasting, LP ("MARRI"), through its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits its reply comments in response to the comments submitted addressing the *Sixth Further Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1/</sup>

**I. Introduction**

MARRI is a small business entity with television broadcast applications pending, inter alia, to provide a first or second commercial television service to thirty-two communities throughout the United States and the United States Virgin Islands, mostly in small markets with vacant allocations that are located near major markets.

MARRI submitted comments in response to the Commission's *Sixth Further Notice* to ensure that the Commission adopts rules for the award of digital television ("DTV") licenses in a manner that is in accord with its statutory mandate under Section 307(b)

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<sup>1/</sup> In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rule Making, 11 FCC Rcd. 10968 (1996) ("*Sixth Further Notice*").

of the Communications Act of 1934, as amended.<sup>2/</sup> That statutory mandate requires that licenses and frequencies be awarded in a manner that ensures a "fair, efficient and equitable distribution of television service among the various states and communities."

Second, MARRI urged the Commission to adopt rules that are inclusive and will allow all parties, that are financially and technically able, to receive DTV allotments in order to ensure that DTV is introduced to the public in as rapid a fashion as possible. In order to ensure that this happens, the Commission must revise its proposed eligibility criteria establishing October 24, 1991 as the cut-off date for eligibility to receive DTV allotments.

Third, MARRI asked the Commission to consider the particularized needs of small businesses in any proposed DTV licensing scheme, and suggested a plan based upon interim operating authority policies.

Finally, MARRI commented that the Commission should first award any vacant channel allotments to all full-service television broadcast entities able to provide service, prior to making any assignments of DTV channels to secondary services.

## **II. DISCUSSION**

### **A. *Many Commenters Are Opposed to the Current Eligibility Deadline***

Many commenters, for various reasons, favor the elimination of the October 24, 1991 eligibility deadline for the allocation

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<sup>2/</sup> 47 U.S.C. § 307(b).

of DTV channels.<sup>3/</sup> The WB Television Network ("WB"), for instance, agrees with MARRI that the Commission has a statutory obligation, in accordance with Section 307(b), to ensure a "fair, efficient and equitable distribution of television broadcast stations among the various states and communities."<sup>4/</sup>

WB told the Commission that the current eligibility criteria and DTV allocation proposal would have a "deleterious" effect on the development of new networks and would prevent many small communities from receiving their first local service.<sup>5/</sup> Accordingly, WB urged the Commission to adopt an allocation plan which takes into consideration the importance of emerging networks and new broadcast stations to the Commission's long-standing goal of fostering "programming and ownership diversity."<sup>6/</sup>

MARRI agrees with WB that the Commission's proposed ATV allotment plan will severely restrict the amount of new services available to the public, and reiterates that the Commission may not abdicate its Section 307(b) responsibility. More importantly, however, MARRI concurs with WB that the Commission's plan will prevent some communities from ever receiving any type of television broadcast service, NTSC or otherwise. Such a result is clearly not consistent with the Commission's statutory obligations and cannot be justified.

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<sup>3/</sup> See e.g., Comments of Curtis Dunnam, d.b.a. Linear Research Association, KM Communications, Inc., Association of America's Public Television Stations and the Public Broadcast Service, Hutchens Communications, Inc., Las Tres Palmas Corporation and the WB Television Network.

<sup>4/</sup> Comments of the WB Television Network at 7.

<sup>5/</sup> Id.

<sup>6/</sup> Id.

As a testament to the importance of television broadcast allocations that provide a fair, efficient and equitable distribution of services, attached as Exhibit A is a partial list representing the NTSC channels for which MARRI has applied. Consistent with its obligations under Section 307(b), the Commission, in every instance where a channel was allocated, necessarily made a corresponding Section 307(b) finding that the allocation was in the public interest and would promote a fair, efficient and equitable distribution of television service. The Commission cannot ignore these and similar substantive determinations in framing its final DTV allocation plan.

**B. *MARRI Agrees With Commenters Opposing the Elimination of Vacant NTSC Channels***

The Commission's plan to eliminate vacant NTSC allocations in order to make way for digital allotments has caused concern among commenters. Most troublesome is the Commission's proposal to eliminate vacant NTSC channels from the Table of Allotments, without any corresponding plan to provide digital allocations in their place. Many commenters cited the incongruity of the Commission's admission that it would probably be able to accommodate all eligible broadcasters with a DTV channel and its proposal to delete all vacant NTSC channels.<sup>2/</sup> The Commission's plan to delete all vacant NTSC channels does not further the goal of providing necessary DTV allocations if such allocations can be made regardless of the NTSC vacancies. In fact, the Commission readily acknowledges that it will have spectrum available after

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<sup>2/</sup> Sixth Further Notice at n.12.

the initial allocations.<sup>8/</sup> Clearly, it would be more effective and less administratively burdensome to assign all possible digital allocations on the front-end of the process rather than attempt to revisit the same issues of accommodation and technical interference after the DTV allocations are made. MARRI agrees with the comments of Red River Broadcasting ("Red River") that the failure to account for uncontested NTSC applications in the DTV table is likely to create problems down the road, and that it would be easier to implement flexible solutions to any potential problems while the DTV table is in flux.<sup>9/</sup> The result of the deletion of the vacant NTSC channels will be to deprive a great many communities, many of them which MARRI proposes to serve, of first and second local television service, without any corresponding public benefit for these communities.<sup>10/</sup>

**C. There is No Statutory Mandate Requiring an October 24, 1991 Eligibility Deadline**

As MARRI pointed out, and as others have concurred<sup>11/</sup> the Commission is not *required* by statute to adhere to its self-imposed October 24, 1991 eligibility deadline. The Commission would be well within the parameters of its statutory authority if it allowed all eligible licensees and permittees, as of the date of the initial DTV allocations, to receive DTV channels. In fact, the 1996 Telecommunications Act<sup>12/</sup> only requires the

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<sup>8/</sup> Sixth Further Notice at ¶ 51.

<sup>9/</sup> Comments of Red River Broadcasting Corporation at 4.

<sup>10/</sup> See MARRI's Comments at Exhibit B. MARRI proposes to provide a first or second local transmission service to thirty two communities.

<sup>11/</sup> See e.g., Comments of KM Communications, Inc. ("KM") and Curtis Dunnam, d.b.a. Linear Research Associates ("Linear").

<sup>12/</sup> The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et. seq.

Commission to restrict eligibility to existing broadcasters at the time that the initial DTV allocations are made.

While MARRI recognizes that the Commission's adoption of eligibility criteria was for the purpose of facilitating an orderly administrative transition to digital service, other commenters also agree with MARRI that the eligibility criteria should be reexamined and fashioned in accordance with the mandate of the 1996 Telecommunications Act.<sup>13/</sup> In addition, MARRI supports WB's proposal that the Commission rule on all pending applications and rule makings for new NTSC stations prior to assigning DTV channels.<sup>14/</sup> In order for the Commission to have an accurate view of the digital landscape, it should first resolve all outstanding applications which may impact upon future DTV service. However, in the event that resolving all pending applications will delay the allocation of DTV channels, MARRI again urges the Commission to consider seriously its proposal to allow broadcasters to form consortia for the purpose of offering DTV under interim operating authority.

#### **D. Alternative Plans**

Red River Broadcasting has suggested a proposal which would allow NTSC channels to be paired with digital channels on a conditional basis until the NTSC grant becomes final. MARRI supports Red River's proposal for pending applications and urges the Commission to give serious consideration to this and any other plans which have as their goal full accommodation. It is

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<sup>13/</sup> See e.g., Comments of Harry and Anna Hain, Linear, KM Communications and Las Tres Palmas Corp.

<sup>14/</sup> WB Comments at 8.

in the public interest, particularly for non-served and underserved communities, for the Commission to develop a long-range plan of accommodation for all communities. This assurance is particularly vital to small businesses that may experience difficulty in obtaining capital to construct NTSC channels, without the guarantee of a future DTV conversion. Potential investors may be hesitant to invest when there is no guarantee that the television system will be technically viable in the long term. As aptly noted by Linear, "there is little economic incentive to place a television station in operation without reasonable expectation of a migration path to DTV during the NTSC phase-out period."<sup>15/</sup> The Commission must make every effort in the pre-allocation phase to accommodate as many small business entities as possible.

### **III. CONCLUSION**

The Commission's statutory obligation to ensure a fair, efficient and equitable delivery of communications services nationwide is paramount. Addressing the concerns of all existing and future broadcasters at this date will alleviate long-term problems of accommodation. MARRI urges the Commission to adopt a plan of full accommodation that will allow as many small business entities as possible to advance the delivery of DTV services to the public in as rapid a fashion as possible. Accordingly, MARRI urges the Commission to adopt rules and policies in accordance

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<sup>15/</sup> Linear Comments at 3.



with the proposals set forth in its Comments.

Respectfully submitted,

MARRI Broadcasting, LP

By: 

James K. Edmundson

Jocelyn R. Roy

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Dated: January 24, 1996



## **MARRI BROADCASTING, LP**

### **EXHIBIT A**

#### **Charlotte Amalie, VI - Channel 43**

*In the Matter of Section 73.606 of the Commission's Rules, Table of Assignments, Television Broadcast Stations, (Puerto Rico and the Virgin Islands) Report and Order, 41 FCC 1188 (1963)*

#### **Goldfield, Nevada - Channel 7**

*In the Matter of Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, (Goldfield, Nevada) Report and Order, 3 FCC Rcd 7315 (1988)*

#### **Fredericksburg, Virginia - Channel 69**

*In the Matter of Amendment of Section 73.606 Table of Assignments, Television Broadcast Stations, (Fredericksburg, VA) Report and Order, 34 FCC 2d 644 (1972)*

#### **Corpus Christi, Texas - Channel 38**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Corpus Christi, Texas) Report and Order 34 FCC 2d 759 (1972)*

#### **Bishop, California -Channel 20**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Bishop, California) Report and Order 2 FCC Rcd 2435 (1987)*

#### **Warner Robins, Georgia - Channel 35**

*In the Matter of Amendment of Section 73.606(b), Table of Allotments Television Broadcast Stations, (Warner Robins and Cordele, Georgia) Report and Order 2 FCC Rcd 3415 (1987)*

#### **Stuart, Florida - Channel 59**

*In the Matter of Amendment of Section 73.606(b). Table of Allotments, Television Broadcast Stations, (Stuart, Florida) Report and Order 2 FCC Rcd 4680; (1987)*

#### **Kenansville, Florida - Channel 31**

*In the Matter of Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, (Kenansville, Florida) Memorandum Opinion and Order 5 FCC Rcd 2663 (1990)*

#### **Sebring, Florida - Channel 60**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Sebring, California) Report and Order 1984 LEXIS 2256 (1984)*

**Palatka, Florida - Channel 63**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Palatka, Florida) Report and Order 1984 LEXIS 2346 (1984)*

**McComb, Mississippi - Channel 28**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (McComb, Mississippi and Natchitoches, Louisiana) Report and Order 1984 LEXIS 2739 (1984)*

**Marianna, Florida - Channel 51**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Marianna, Florida) Report and Order 1984 LEXIS 2304 (1984)*

**Jackson, Mississippi - Channel 51**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Jackson, Mississippi) Report and Order 1985 LEXIS 3654 (1985)*

**Inverness, Florida - Channel 64**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Inverness and Williston, Florida) Report and Order 1985 LEXIS 3826 (1985)*

**Tuscomb, Alabama - Channel 52, Selma, Alabama - Channel 29**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Tuscomb and Selma, Alabama) Report and Order 1985 LEXIS 2917 (1985)*

**Myrtle Beach, South Carolina - Channel 32**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Myrtle Beach, South Carolina) Report and Order 1985 LEXIS 3492 (1985)*

**Vineland, New Jersey - Channel 59**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Dover and Seaford, Delaware; Asbury Park, Atlantic City, New Brunswick, Newton, Vineland, West Milford and Wildwood, New Jersey; Kingston and Syracuse, New York; and Bethlehem, Lebanon and State College, Pennsylvania) Third Report and Order 56 Rad. Reg. 2d 476 (Pike and Fischer) (1984)*

**Destin, Florida - Channel 64**

*In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Destin, Florida) Report and Order 1985 LEXIS 3792 (1985)*

**Louisville, Kentucky - Channel 21**

*In the Matter of Amendment of Section 3.606 of the Commission's Rules and Regulations Sixth Report and Order 1 RR 91:601 (Pike and Fischer) (1952)*

## **CERTIFICATE OF SERVICE**

I, Bernadette T. Clark, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 24th day of January, 1997, caused to be sent by hand delivery, a copy of the foregoing Reply Comments of MARRI Broadcasting, LP to the following:

### **By Hand Delivery**

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Washington, D.C. 20554

The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 918  
Washington, D.C. 20554

The Honorable Rachelle Chong  
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The Honorable Susan Ness  
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